

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:05-CR-204-D  
No. 5:09-CV-1-D

ZHIVARGO K. JENKINS,	)	
	)	
Petitioner,	)	
	)	
v.	)	<b>ORDER</b>
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

On June 11, 2009, this court referred respondent's motion for summary judgment to Magistrate Judge Webb for an evidentiary hearing and a Memorandum and Recommendation ("M&R") [D.E. 64]. On July 15, 2009, Judge Webb held a status conference in preparation for an evidentiary hearing. Petitioner attended the status conference with his counsel, Lewis A. Thompson. During the status conference, petitioner was sworn and thereafter petitioner moved to withdraw his 28 U.S.C. § 2255 petition. Judge Webb then issued an M&R recommending that petitioner's motion to withdraw his petition be granted and the petition be dismissed [D.E. 69]. Neither party filed objections to the M&R.

"The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection is made." Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (alteration in original) (quotation omitted) (emphasis removed). Absent a timely objection, "a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Id. (quotation omitted).

The court has reviewed the M&R and the record. The court is satisfied that there is no clear error on the face of the record. Accordingly, the court adopts the M&R. Petitioner's motion to withdraw his petition is GRANTED and the petition [D.E. 51] is dismissed. Respondent's motion to dismiss or for summary judgment is DENIED as moot [D.E. 55]. This matter is DISMISSED. The Clerk is directed to close the case.

SO ORDERED. This 30 day of September 2009.

  
JAMES C. DEVER III  
United States District Judge